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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 90

JOHN H. PARKER,

Petitioner,

vs.

DENCY PARKER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

ROBERT E. LYNCH,
Counsel for Petitioner.

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DENCY PARKER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, John H. Parker, respectfully prays for a writ of certiorari to review the final judgment of the Supreme Court of the State of Florida, wherein it adjudged that the decision of the highest court of Cuba was not conclusive upon the rights of the parties and refused to give full faith and credit to the same (R. 22-24).

Summary Statement of the Matter Involved

Respondent filed her bill of complaint against the petitioner in the Circuit Court of Dade County, Florida, for separate maintenance (R. 1-5).

Petitioner, answering, pleaded the final judgment of the Cuban Court (R. 5).

The cause was referred to a master by the trial judge, who heard testimony of witnesses and received certified copies of court proceedings had in the Republic of Cuba. The master's report (R. 8-15) found that both parties were citizens of the United States, married at Havana, Cuba, where petitioner had resided for several years, conducting extensive business interests.

Approximately a year and a half after the marriage, petitioner filed a complaint for divorce against respondent praying that the marriage entered into in Cuba be dissolved. Constructive service allowable under the laws of Cuba was had upon respondent, and the court awarded an absolute divorce.

Respondent, who was physically outside of Cuba at the time of the decree, thereafter returned and applied to the court to vacate the decree. The court denied the respondent's application, and its decision was affirmed by the highest court of Cuba. (See findings of fact—Master's Report R. 8-15.)

Subsequently, respondent established residence in Miami, Florida, and sued the petitioner in the present suit. The master's report held the judgment of absolute divorce of the Cuban courts barred respondent from the relief prayed in the Miami Court (R. 15).

The trial judge confirmed the master's report and dismissed the bill of complaint (R. 17).

The Supreme Court of Florida reversed, determining that the judgment of a foreign country would not be recognized unless opportunity had been given for a fair trial after service of process or voluntary appearance of the defendant, under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries (R. 22-24).

The question involved is whether the Florida Court, by ignoring the Cuban judgment, has deprived petitioner of a property right in violation of the 14th Amendment. This question was in a timely way raised in the State Court (R. 5-6).

Respondent's counsel, in his brief before the Supreme Court of Florida, contended that the Cuban decree was contrary to the due process clause of the Federal Constitution.

Jurisdiction

The date of the decision and judgment of the Supreme Court of the State of Florida of which review is here sought, is February 27, 1945.

The statute granting the power to review herein is Judicial Code, Section 237 (b), United States Code, Title 28, Section 344 (b). There is here involved the constitutional right of a citizen of this country to have the decision of the highest court of a foreign country given full faith and credit, where he litigates with another citizen in a court having jurisdiction of the parties and subject matter.

There is no adequate non-federal ground on which to support the opinion and judgment of the Florida Supreme Court.

Reasons for Issuance of Writ

The Supreme Court of the State of Florida has decided an important case in which it held that the judgment of the Court of the Republic of Cuba was not entitled to full faith and credit, despite the fact that the court had jurisdiction over the parties and subject matter of the case.

The judgment of the Cuban court constituted a property right, and petitioner was deprived of this property right by the Florida Court in violation of the 14th Amendment to the United States Constitution.

In view of the extent and scope of the dealings both of citizens of this country as well as citizens of other countries to the south, it is important, in the administration of justice, for this Court to determine whether judgments of a foreign civilized country determine the rights between the litigants, or whether the losing party may relitigate them in a State Court.

JOHN E. PARKER,
Petitioner,
By ROBERT E. LYNCH,
Counsel.